

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2139

Introduced by Assembly Member Eggman

February 20, 2014

An act to ~~add Section 442.4 to~~ amend Sections 442, 442.5, and 442.7 of the Health and Safety Code, relating to terminal illness.

LEGISLATIVE COUNSEL'S DIGEST

AB 2139, as amended, Eggman. End-of-life care: patient notification.

Under existing law, the State Department of Public Health licenses and regulates health facilities, including hospice facilities, and the provision of hospice services. Existing law establishes the Medical Practice Act, which provides for the regulation and licensure of physicians and surgeons by the Medical Board of California. *Existing law authorizes an adult to give an individual, known as an agent, authority to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.*

When a health care provider, as defined, makes a diagnosis that a patient has a terminal illness, existing law requires the health care provider to provide the patient, upon the patient's request, with comprehensive information and counseling regarding legal end-of-life options, as specified, and provide for the referral or transfer of a patient, as provided, if the patient's health care provider does not wish to comply with the patient's request for information on end-of-life options.

~~This~~ *This bill would apply these provisions to an agent under a power of attorney for health care for a patient with a terminal illness diagnosis. The bill would additionally require a the health care provider, as defined, to notify the patient or, when applicable, the agent, when the health*

care provider makes a diagnosis that a patient has a terminal illness, of the patient's right to comprehensive information and counseling regarding legal end-of-life care options. *The bill would define the term "terminal illness" for these purposes.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 442 of the Health and Safety Code is*
2 *amended to read:*

3 442. For the purposes of this part, the following definitions
4 shall apply:

5 (a) "Actively dying" means the phase of terminal illness when
6 death is imminent.

7 (b) "Agent" means an individual designated in a power of
8 attorney for health care, as provided in Article 1 (commencing
9 with Section 4670) and Article 2 (commencing with Section 4680)
10 of Chapter 1 of Part 2 of Division 4.7 of the Probate Code, to make
11 a health care decision for the patient who has been diagnosed with
12 a terminal illness, regardless of whether the person is known as
13 an agent or attorney in fact, or by some other term.

14 ~~(b)~~

15 (c) "Disease-targeted treatment" means treatment directed at
16 the underlying disease or condition that is intended to alter its
17 natural history or progression, irrespective of whether or not a cure
18 is a possibility.

19 ~~(c)~~

20 (d) "Health care provider" means an attending physician and
21 surgeon. It also means a nurse practitioner or physician assistant
22 practicing in accordance with standardized procedures or protocols
23 developed and approved by the supervising physician and surgeon
24 and the nurse practitioner or physician assistant.

25 ~~(d)~~

26 (e) "Hospice" means a specialized form of interdisciplinary
27 health care that is designed to provide palliative care, alleviate the
28 physical, emotional, social, and spiritual discomforts of an
29 individual who is experiencing the last phases of life due to the
30 existence of a terminal disease, and provide supportive care to the
31 primary caregiver and the family of the hospice patient, and that

meets all of the criteria specified in subdivision (b) of Section 1746.

(e)

(f) “Palliative care” means medical treatment, interdisciplinary care, or consultation provided to a patient or family members, or both, that has as its primary purpose the prevention of, or relief from, suffering and the enhancement of the quality of life, rather than treatment aimed at investigation and intervention for the purpose of cure or prolongation of life as described in subdivision (b) of Section 1339.31. In some cases, disease-targeted treatment may be used in palliative care.

(f)

(g) “Refusal or withdrawal of life-sustaining treatment” means forgoing treatment or medical procedures that replace or support an essential bodily function, including, but not limited to, cardiopulmonary resuscitation, mechanical ventilation, artificial nutrition and hydration, dialysis, and any other treatment or discontinuing any or all of those treatments after they have been used for a reasonable time.

(h) “Terminal illness” means a medical condition resulting in a prognosis of a life expectancy of one year or less, if the disease follows its normal course.

SEC. 2. Section 442.5 of the Health and Safety Code is amended to read:

442.5. When a health care provider makes a diagnosis that a patient has a terminal illness, the health care provider shall *notify the patient of his or her right to, or when applicable, the agent of the patient’s right to, comprehensive information and counseling regarding legal end-of-life options and, upon the patient’s patient or agent’s request, provide the patient or agent with comprehensive information and counseling regarding legal end-of-life care options pursuant to this section.* When a terminally ill patient is in a health facility, as defined in Section 1250, the health care provider, or medical director of the health facility if the patient’s health care provider is not available, may refer the patient *or agent* to a hospice provider or private or public agencies and community-based organizations that specialize in end-of-life care case management and consultation to receive comprehensive information and counseling regarding legal end-of-life care options.

1 (a) If the patient *or agent* indicates a desire to receive the
2 information and counseling, the comprehensive information shall
3 include, but not be limited to, the following:

4 (1) Hospice care at home or in a health care setting.

5 (2) A prognosis with and without the continuation of
6 disease-targeted treatment.

7 (3) The patient's right to refusal of or withdrawal from
8 life-sustaining treatment.

9 (4) The patient's right to continue to pursue disease-targeted
10 treatment, with or without concurrent palliative care.

11 (5) The patient's right to comprehensive pain and symptom
12 management at the end of life, including, but not limited to,
13 adequate pain medication, treatment of nausea, palliative
14 chemotherapy, relief of shortness of breath and fatigue, and other
15 clinical treatments useful when a patient is actively dying.

16 (6) ~~The~~ *If the patient has not appointed an agent under a power*
17 *of attorney for health care, the* patient's right to give individual
18 health care instruction pursuant to Section 4670 of the Probate
19 Code, which provides the means by which a patient may provide
20 written health care instruction, such as an advance health care
21 directive, and the patient's right to appoint a legally recognized
22 health care decisionmaker.

23 (b) The information described in subdivision (a) may, but is not
24 required to, be in writing. Health care providers may utilize
25 information from organizations specializing in end-of-life care
26 that provide information on factsheets and Internet Web sites to
27 convey the information described in subdivision (a).

28 (c) Counseling may include, but is not limited to, discussions
29 about the outcomes for the patient and his or her family, based on
30 the interest of the patient. Information and counseling, as described
31 in subdivision (a), may occur over a series of meetings with the
32 health care provider or others who may be providing the
33 information and counseling based on the patient's needs.

34 (d) The information and counseling sessions may include a
35 discussion of treatment options in a manner that the patient and
36 his or her family, *or, when applicable, the agent*, can easily
37 understand. If the patient *or agent* requests information on the
38 costs of treatment options, including the availability of insurance
39 and eligibility of the patient for coverage, the patient *or agent* shall
40 be referred to the appropriate entity for that information.

1 *SEC. 3. Section 442.7 of the Health and Safety Code is amended*
2 *to read:*

3 442.7. If a health care provider does not wish to comply with
4 his or her patient's request *or, when applicable, the agent's request*
5 for information on end-of-life options, the health care provider
6 shall do both of the following:

7 (a) Refer or transfer a patient to another health care provider
8 that shall provide the requested information.

9 (b) Provide the patient *or agent* with information on procedures
10 to transfer to another health care provider that shall provide the
11 requested information.

12 ~~SECTION 1. Section 442.4 is added to the Health and Safety~~
13 ~~Code, to read:~~

14 ~~442.4. When a health care provider makes a diagnosis that a~~
15 ~~patient has a terminal illness, the health care provider shall notify~~
16 ~~the patient of his or her right to comprehensive information and~~
17 ~~counseling regarding legal end-of-life options pursuant to Section~~
18 ~~442.5.~~